

November 1992

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### Recommended Citation

Lasser, William (1992) "Biography Behind the Scenes: Benjamin Victor Cohen and the Spirit of the New Deal," *Journal of Political Science*: Vol. 20 : No. 1 , Article 9.

Available at: <https://digitalcommons.coastal.edu/jops/vol20/iss1/9>

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## BIOGRAPHY BEHIND THE SCENES: BENJAMIN VICTOR COHEN AND THE SPIRIT OF THE NEW DEAL

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Benjamin Victor Cohen was one of the most important and influential figures in American politics in the 1930s and 1940s. Working always behind the scenes, he played a major role in shaping America's response to the Great Depression of the 1930s and to the growing global crisis that led, eventually, to U.S. involvement in the second World War. Though his official titles were inconsequential, Cohen quickly emerged as a key adviser to President Franklin D. Roosevelt, taking responsibility over a wide range of domestic and foreign policy matters.

It is impossible to assess Cohen's role in New Deal Washington except in the context of his relationship with Thomas Gardiner Corcoran, who served in a similar capacity in the first years of the Roosevelt administration. For several years, Cohen and "Tommy the Cork" were linked in an unusual partnership, working closely together to write legislation, lobby Congress, and generally serve as go-betweens in the growingly complex bureaucratic structure of the federal government. Their role in the New Deal era is best summed up by their popular nickname—"The Gold Dust Twins"—after a 1930s soap advertisement that urged American housewives to "let the Gold Dust Twins do your work."

Though I am writing Cohen's biography, Corcoran figures heavily in the New Deal chapters. Furthermore, Cohen and Corcoran remained life-long friends, and their relationship remains one of the central issues in the book. Their relationship is important in another way, too: for the political scientist, Cohen and Corcoran's life and work provides an extraordinary vehicle to view American and global politics in the 1930s and 1940s. For while Cohen and Corcoran were by no means at the top of the Washington power structure, they were very definitely at its center. Close to such key figures as FDR himself, Supreme Court Justices Felix Frankfurter, Oliver Wendell Holmes, and Louis Brandeis, and congressional leaders like House Majority Leader (and later Speaker) Sam Rayburn and James F. Byrnes, Cohen and Corcoran were involved, directly or indirectly, in an extraordinary number of the key events and decisions of the Roosevelt era. They thus allow the political biographer to analyze afresh the events of

this critical period in U.S. and world history, and provide new insight into the political philosophy and working style of the first modern administration in American history. Because the Roosevelt administration was so influential in shaping the modern American political system and in helping to create the post-war world political order, a study of the lives and work of Cohen and Corcoran tells us a great deal about the world in which we ourselves live.

Such a biography, however, presents a variety of difficulties and challenges. Some of these, of course, are the same as those which face any biographer. Others are unique. In this paper I want to focus on the literary and scholarly challenges presented by a biography of men whose influence, while obviously great, was frequently exercised in secret; whose activities were frequently undertaken anonymously or under other people's names; whose "paper trails" are minimal, misleading, or both; and whose exploits and contributions are unknown even to many historians of the period. Most of all, I wish to highlight some of the benefits and some of the dangers inherent in writing a biography of men who worked for—but who were not themselves—major political figures.

## I

Ben Cohen and Tommy Corcoran first worked together in 1933, when Cohen was brought to Washington by Felix Frankfurter to work on the Securities Act of 1933. Although nearly four years had passed since the collapse of the stock market in October 1929, there was still no significant federal regulation of the securities industry when Franklin D. Roosevelt took office in March 1933. The new president quickly made stock market reform a priority. As a first step, he and his advisers proposed a measure, modeled on the British Companies Act, that required those who offered securities for sale to disclose a variety of information to prospective buyers.

Unfortunately, the first efforts at producing an effective "truth in securities" bill were an utter failure, and by April 1933 Roosevelt needed help. Frankfurter brought Cohen and Corcoran together with James Landis—who would become the first chairman of the Securities Exchange Commission—and charged them with producing a viable and effective securities bill. The Cohen-Corcoran-Landis draft eventually became the Securities Act of 1933, and marked the beginning of the Cohen-Corcoran partnership.



Cohen, at the time, was nearly 40. The son of Jewish immigrants from Poland and Lithuania, Cohen attended the University of Chicago, graduating with honors at the age of 19—with, it was said, the highest grades the University had ever recorded. By 21 he had earned his law degree and had moved on to do graduate work with Frankfurter at the Harvard Law School; before the age of 30, he had served as a lawyer for the U.S. Shipping Board, as an adviser to Julian Mack and the American Zionists at the Versailles Peace Talks, and as counsel to the American Zionist office in London. Among other things, he helped to write the Palestine Mandate.<sup>1</sup>

In the early 1920s, Cohen returned to the United States, setting up in the private practice of law on Wall Street. He became an active investor in the wild days of the 1920s, amassing what even today would be considered a solid fortune in stocks (he was said to be the largest single shareholder in the Chrysler Corporation).<sup>2</sup> By the late 1920s most if not all of his income came from investments—he even listed his occupation for tax purposes as “lawyer and investor.”<sup>3</sup> While in New York, Cohen found time to assist in the preparation of progressive legislation in the state capital of Albany, and continued to assist the Zionist movement in Palestine, focusing on economic development questions. When Frankfurter needed help in drafting the Securities Act, therefore, Cohen was an obvious choice: a brilliant legal mind with a gift for writing legislation and an impressive background in high finance.

Corcoran, by contrast, was a relative newcomer. Born in 1900 to a politically active Irish-American family in Pawtucket, Rhode Island, Corcoran graduated at the top of his class at Brown University and then at Harvard Law School. There, he too met Frankfurter, who persuaded him to take an extra year of legal education in preparation for a career in law education.<sup>4</sup> The following year—1926-7—Corcoran was selected by Frankfurter to go to Washington to serve as law clerk to Justice Oliver Wendell Holmes. All of this, while exciting and interesting, kept Corcoran away from his professed goal—which was, as he put it, to go to Wall Street and make a million dollars.<sup>5</sup> He accomplished the first part of that quest in 1927, when he joined the influential Wall Street firm of Cotton, Franklin. The second part proved more difficult, however; Corcoran arrived on Wall Street too late to really benefit from the run-up of stocks in the 1920s, and just in time to be hit by the October 1929 crash. For the next two years, he suffered through Wall Street’s depression, doing the work of two or three men and making, at least in relative terms, next to

nothing. When the opportunity came to go back to Washington in 1931, Corcoran jumped at it. That opportunity came in the form of an appointment to the staff of the Reconstruction Finance Corporation, a bipartisan agency set up under President Herbert Hoover to provide capital for the reorganization of banks and other large corporations hit hard by the growing Depression.

When Roosevelt came to power in March 1933, Corcoran was so disappointed with the new president's inaugural address that he almost went back to New York; Holmes persuaded him to stay, and then Frankfurter tapped him to work with Cohen and Landis on the Securities bill.

Cohen and Corcoran became friends almost instantly, and their relationship was, for both men, unique. Cohen was a loner; a quiet, reserved, and retiring man. His kind and gentle manner, his unpretentiousness, and his generosity made him beloved by many, but he was close to very few. Corcoran, by contrast, was robust and gregarious. He made friends easily, and fit comfortably with men and women from every stratum of New Deal society. He could entertain the president with Irish ballads; drink whiskey with the Texas congressional delegation; charm the Washington secretaries (one of whom he married); and hold his own with Wall Street executives or local political bosses. His aggressiveness and brashness caused him to make as many enemies as friends, however, and ultimately caused him to break with several of the few real friends he had. Only with Ben Cohen was his friendship constant from the early 1930s until the end of their lives.

Cohen, Corcoran, and Landis began work on the securities bill on April 7, 1933. A first draft was prepared by April 10; a second draft, produced in response to various objections made by the House Interstate Commerce Committee, emerged by April 21.<sup>6</sup> By that time it was already clear that Cohen and Corcoran were getting on famously but that Landis and Cohen had difficulty working together.<sup>7</sup> Nevertheless, the threesome produced a draft bill that substantially modified the administration's original proposal. Like the British Companies Act, the Cohen-Corcoran-Landis draft required registration of all new securities and full disclosure of a variety of financial details. Unlike the original administration proposal, however, the new bill was specifically adapted to the rapidly evolving complexity of modern finance, and ensured for flexible administration by granting the Federal Trade Commission a wide variety of discretionary powers. Cohen's major contribution was to couple this administrative flexibility with a detailed schedule of disclosure requirements written directly into the statute itself. This combination of statutory specificity and administrative discretion remains a model statute.



The bill, moreover, closed a major loophole by extending the reach of the measure not only to the primary issuers of securities but also to underwriters, lawyers, accountants, appraisers, and others involved in the securities industry.<sup>8</sup> Despite the objections of the business community, the Cohen-Corcoran-Landis bill passed the House and survived essentially intact through a conference with the Senate. It became law on May 27, 1933.

Cohen and Corcoran played major roles in the other two major pieces of New Deal securities legislation: the Securities Exchange Act of 1934, and the Public Utilities Holding Company Act of 1935. Their draft of the Securities Exchange Act, largely written by Cohen, would have fundamentally restructured American finance. The draft mandated that

(1) credit for exchange trading should be severely restricted; (2) the activities of individual exchange members should be clearly defined and circumscribed in order to make precise the relationship between members and clients and in order to force the exchanges to fulfill their primary obligation as a public marketplace; (3) trading by directors, officers, and principle stockholders of listed corporations should be subject to public scrutiny and legal redress; (4) the financial affairs of listed corporations should be a matter of public record.

Cohen, moreover, would have given the Federal Trade Commission "almost plenary power" to regulate the stock exchanges.<sup>9</sup> The bill almost perfectly reflects the philosophical underpinnings of the New Deal: it dealt strictly, even harshly, with the abuses of capitalism as practiced on Wall Street, but it did so not to destroy Wall Street, but to save it. It was a liberal, reformist bill, but it was written by a successful Wall Street insider.

Cohen's draft was brilliantly crafted, but it suffered from a variety of political faults. First, Cohen, Corcoran, and Landis had produced a draft bill without a clear mandate from or the specific support of President Roosevelt. Their original commission to write the bill came informally, from Max Lowenthal and Ferdinand Pecora, who had close connections to Senator Duncan Fletcher (D-Fla.). The threesome had only "a display of interest" from White House aide Rexford Tugwell to indicate White House support. They were given no clear policy guidance from either

Congress or the president. Moreover, they had distributed their draft within only a narrow circle centered around Sen. Fletcher and Rep. Sam Rayburn, and had failed even to anticipate—much less to assuage—the concerns of the business community. When President Roosevelt called for securities legislation in February 1934, Fletcher and Rayburn had the Cohen-Corcoran-Landis bill at the ready, and introduced it immediately. But the president's battle cry was vague and did not specifically endorse the approach of the Cohen-Corcoran-Landis bill.<sup>10</sup>

Cohen, Corcoran, and Landis were blindsided by the extent of the business community's opposition to their bill, and by the speed and skill with which that opposition was marshalled. Richard Whitney, the president of the New York Stock Exchange, came to Washington to direct the opposition to the bill personally, occupying an entire floor of the Willard Hotel with his troops.<sup>11</sup> Cohen, Corcoran, and Landis also found themselves caught between warring factions within the administration, including the Department of the Treasury, the Federal Reserve Board, and the Department of Commerce.

The ensuing battle brought Cohen and Corcoran into the public spotlight for the first time, battling a well-organized and determined foe. Their reaction to this challenge gave them their first experience in learning to play the Washington power game. When Corcoran went to testify in defense of the bill, he found that his opponents had outmaneuvered him: to his surprise, the committee hearing was public, not private; and the business lobby had arranged for their own lawyer to sit beside the committee and cross-examine the witness! Corcoran's natural talents and the force of his personality got him through the crisis, however; he reacted to this trying situation, as the historian Arthur Schlesinger put it, with "limitless aplomb," relishing the give-and-take like an aroused streetfighter.<sup>12</sup>

For the first time, Cohen and Corcoran had to learn to master the political process. They learned to size up the political realities and balance them against their own policy preferences. They engaged in secret negotiations and compromise with business leaders, executive officials, and congressional power brokers. They learned to play the House off against the Senate.<sup>13</sup> When they could not achieve what had seemed to them the key element of their bill—namely keeping the Federal Trade Commission in control of the administration of the statute—they accepted reality and moved forward to ensure that the alternative—the newly created Securities Exchange Commission—would not be "captured" by Wall Street interests.



Above all, perhaps, Cohen and Corcoran discovered that one role the subordinate could play on behalf of his politically more visible superiors was the very simple one of taking the heat. Corcoran and Cohen were subjected to a wide variety of denunciations on the floor of Congress, even charged with being communistic and anti-capitalist (that they lived with other New Dealers in a Georgetown residence known as "The Little Red House on R Street" did not help matters). Corcoran later wrote Frankfurter that "Ray Moley, Pecora, Sam Rayburn, and [Vice President John Nance] Garner have been magnificent . . . . Otherwise we kids would have taken the beating alone."<sup>14</sup> In fact, though, it was Corcoran and Cohen who performed the service to their superiors and not the other way around.

A similar lesson was to be learned the following year in the fight over the Public Utilities Holding Company Act. Cohen, who had been appointed counsel to the National Power Policy Committee, wrote the first draft of the bill at the request of Federal Trade Commissioner Robert Healy. Though he knew that Roosevelt believed holding companies "should be abolished," Cohen proceeded nonetheless to write a bill that did "not outlaw the holding company but regulates and restricts the use of the holding company form and provides a mechanism through which, over a period of time, existing holding company structures may be simplified, and their field limited to a sphere which their economic advantages may be demonstrable."<sup>15</sup> Perhaps influenced by his experience with the Securities Exchange Act, Cohen had forged a bill that would essentially achieve the president's objectives but which would be far more politically attractive than any attempt to destroy the holding companies outright. For one thing, he wanted to ensure that "Congress feels that the particular bill is their bill and not the bill of the executive."<sup>16</sup> Roosevelt insisted, however, and Cohen redrafted the bill to include the so-called "death sentence" provision giving the SEC the authority to dissolve utility holding companies outright after January 1, 1940.

The ensuing fight over the Holding Companies Act was messy and vicious, and Cohen and Corcoran were at the center of it. The Utilities Companies carried out an extraordinary lobbying effort, enlisting powerful allies, especially in the House. Political considerations, of course, were also a factor. In the end the fight boiled down to the "death sentence" provision; the Senate adopted it, the House did not. The provision was eventually defeated in conference, and the president signed the amended bill.

Throughout the process Roosevelt let Cohen and Corcoran take the blame for the death penalty provision, which was



added originally at his own insistence. And blamed they were. As Cohen described it later,

The atmosphere was super-charged with charges that the Congressmen were being used as rubber stamps . . . that no one knew or understood anything about the bill but a couple of young men—hot heads—with no political or practical experience. Every effort . . . was put forth to sow the seeds of suspicion and distrust between the Senate and House. Tales were carried back and forth to make the leaders of each committee feel that the leader of the other was trying to double-cross him, every petty jealousy was played upon.<sup>17</sup>

One Republican Senator, Ralph Owen Brewster of Maine, had indicated his support of the administration bill to Corcoran, then turned around and denied he had ever offered such support. Moreover, he charged that Corcoran had threatened that if Brewster did not support FDR on the death sentence provision, the president “would find it necessary to stop construction on the Passamaquoddy Dam in my district.” Brewster’s charge touched off a formal congressional investigation, which fully vindicated Corcoran but which, in the meantime, played into the hands of the bill’s opponents.

The Public Utilities Holding Company Act was subsequently challenged in the federal courts, with Ben Cohen in charge of the government’s defense. The utilities companies engineered their own test case before a sympathetic judge in Baltimore, MD, which took the form of a suit brought by a creditor against a bankrupt holding company. Thus the government was reduced to the minor role of appearing as an *amicus curiae*. Cohen, however, devised a counter-strategy: he simply refused to contest the Baltimore suit, allowing his opponents to win the battle but effectively postponing the war. Cohen continued to refuse to contest similar suits until he found his own test case. Then he argued it brilliantly, and won.<sup>18</sup>

The battles over the securities acts and the Public Utilities Holding Company Act clearly illustrate Cohen and Corcoran’s role in the Roosevelt administration. Though they held no important formal offices, and no specified duties, they fulfilled a key function in a period of rapid expansion of the federal government’s size, complexity, and functions: they provided a vital link between the legislative, executive, and judicial depart-

ments, and provided a measure of coordination and control between the executive departments. At a time when there were few formal mechanisms for bridging the gaps created by the American constitutional system of the separation of powers, Cohen and Corcoran provided an informal one. At times they functioned as congressional committee staff; at other times, as White House staff. When necessary, they could carry messages from the justices of the Supreme Court to Roosevelt, or from the president to key congressmen. They provided liaison between, for example, the Justice Department and the power agencies in order to coordinate strategy over the handling of the Public Utilities cases.

It is often asked how the American system of government, designed in an age when the functions of the federal government at home and abroad were sharply limited, manages to function in the twentieth century as well as it does. Since the great expansion of federal power in the 1930s and 1940s, a variety of functional relationships between the various power centers in Washington have evolved and multiplied. In the early stages of the expansion, however, the ability of the government to manage its increasing responsibilities was greatly enhanced by the kind of informal networking and power brokering practiced by Cohen and Corcoran. In many ways, in fact, the more formalized system of today evolved directly from the Cohen and Corcoran model.

The three securities laws which they helped write were in a very real sense Cohen and Corcoran's baptism under fire in the political arena. By 1936 they had established themselves as fixtures in New Deal Washington. They had proved their talents as draftsmen and as lobbyists, and had proven their loyalty to Roosevelt, Frankfurter, and key congressional leaders. They were playing an increasingly important role as Roosevelt's speechwriters, as his eyes and ears in the political field, and as his personal operatives.

They had also learned some important lessons. The Securities Exchange Act taught them that they could not be successful if they merely served as technical advisers on specific issues and left it to others to gauge the political winds and adjust accordingly. The securities fights also taught them the essential vulnerability inherent in their positions as unofficial staff aides: they could be used and manipulated by their friends—meaning their political superiors—who might employ them as decoys or bargaining chips or enlist them for unsavory tasks (as when FDR had them carry the brunt of the "death penalty"); and they could become the front men for attack by their enemies, who found them easier and more vulnerable targets than the men they worked for.



In both cases they provided an invaluable service; but how could they protect themselves in the process?

## II

By far the most effective way Cohen and Corcoran learned to protect themselves was to develop what has come to be known as a “passion for anonymity.” When the Brownlow Commission (set up by FDR in 1936 to study ways of addressing the president’s increasingly obvious need for formal staff support) used that phrase to describe the kind of mind-set necessary for a presidential adviser, they more than likely had Cohen and Corcoran in mind. For Cohen and Corcoran soon discovered that they could be most effective in pursuing both their own agenda and the president’s by staying as much as possible outside the public eye. Keeping a low profile reduced their vulnerability to attack from the opposition, and, in the long run, made them more useful to their superiors as well.

It is commonly assumed that the “passion for anonymity” is a sort of character trait, and indeed many New Dealers assumed that Cohen especially relished the background role to which he had grown accustomed. Frustrated with not being taken seriously by the State Department, for example, Cohen asked in January 1945 to be appointed Counselor. Roosevelt rebuffed him, however, and Cohen was so unhappy about being kept on the sidelines that he briefly left government service altogether.<sup>19</sup> Cohen indeed was quiet and unassuming, and he did turn down a federal judgeship when it was offered to him.<sup>20</sup> Even so, his passion for anonymity had its limits.

For Corcoran, however, the habit of keeping out of the public eye was clearly an acquired trait. The ebullient and gregarious Corcoran had to restrain himself deliberately out of self-defense. Until around 1934, for example, he wrote long letters to Frankfurter and others, describing his own activities and the political scene in marvelous detail. In that year—apparently as a result of the adverse publicity in the Securities Exchange Act controversy—Corcoran’s letters become more and more guarded. Eventually, it appears, he learned to enjoy operating in secrecy. He began making sensitive phone calls from pay phones (his phone was tapped, in fact, during the Truman administration), and he depended more and more on personal contacts instead of written communications. When in the 1940s he aided Army Air Corps General Claire Chennault in forming the American Volunteer Force that fought in China prior to American involvement in World War II, he and his partners communicated by code, and

formed increasingly complex and arcane legal arrangements to hide their involvement. Later in life, when Corcoran had become an influential Washington lawyer-lobbyist, his numerous clients—including the United Fruit Company and the Republic of China—learned to appreciate his acquired passion for secrecy. The professional necessity of guarding his client's interests combined with the sensitive nature of much of his work to make him a kind of shadowy figure in Washington, operating behind the scenes, pulling strings, never showing his hand. The image of secrecy itself became a source of political power, for, not knowing exactly how much power he actually wielded, friends and enemies alike tended to estimate his power on the high side.

Corcoran did not develop this passion for secrecy quickly enough to prevent him from gaining a reputation as the administration's hatchet man in the 1930s. In 1937 he managed the campaign to "pack" the Supreme Court by replacing hostile older justices with younger ones friendly to the New Deal. When the Court-packing plan became a political debacle, Corcoran took much of the blame. The following year, Roosevelt enlisted Corcoran's help in his attempt to "purge" the Democratic Party of anti-new Deal conservatives. The purge failed also, and again Corcoran took the fall. Corcoran's increasingly negative reputation led in part to his break with Roosevelt in the 1940s and to the ending of his public career; he had outlived his usefulness to FDR, and was too much of a political liability to be appointed to any important position within the administration. Lacking money, and feeling betrayed, Corcoran left the administration for private life.

Cohen too fell naturally into a less public role. In 1940, he was the principal architect of the Destroyers for Bases Agreement, under which the United States traded old navy ships to Britain in return for the right to use British navy bases. The arrangement seemed to violate the Neutrality Act (the Attorney General had ruled a few months before, in fact, that a similar arrangement involving torpedo boats was illegal) and was, moreover, politically dangerous, especially since 1940 was a presidential election year. Cohen devised an elaborate and ingenious legal argument to justify the plan, however, and then orchestrated a major public relations campaign to garner public support. His involvement in the Destroyers deal—a measure which was critical to the British war effort at the time and which became the precursor to the more elaborate Lend-Lease program—was kept so far in the background, however, that Cohen has received almost no credit in the history books.



Cohen and Corcoran's "passion for anonymity"—even when artificially self-imposed—served them well. For their biographer, however, it is more problematical. Because they operated in the shadows, committing less and less to paper and doing more and more in other people's names, they left a very minimal paper trail. The Corcoran Papers are voluminous, and give a general idea of what he was up to.<sup>21</sup> But they do not provide a clear or unambiguous account of his activities on a detailed, day-to-day level. The Cohen Papers, by contrast, are extremely limited in scope—a total of 26 boxes in the main collection, plus scattered materials elsewhere.<sup>22</sup> I have at times summed up the difficulties involved in writing such a biography by saying—with what seems like only a little exaggeration—that Cohen didn't save anything, and Corcoran didn't write anything down.

Attempting to reconstruct the multifarious activities of two such men from a limited record poses dangers of two varieties. It is possible to understate their activities, since much of what they did is not recorded in clear and unambiguous terms. More often, one is tempted to overstate their influence on events. For they frequently used their lack of public exposure to give the appearance, as I have said, that their power was greater than it really was. Thus those who knew them, even fairly well, are not always able accurately to assess their importance, and even contemporary accounts often contain distortions and exaggerations. Moreover, their own recollections—especially Corcoran's—are notoriously unreliable, as they frequently adopted a deliberate strategy of either exaggerating or downplaying their own activities to serve particular political purposes. (One example comes to mind. Corcoran played a minor role in expediting the building of National Airport in Washington, DC in the late 1930s—an effort that was appreciated by the military, since the new Pentagon building was to be built on the site of the old airstrip and construction could not begin until after National was opened for business. Years later, in his unpublished memoirs, Corcoran declared, "I built that airport.")

Writing a biography of men who were always in the background does have its advantages, however. It provides a unique perspective on an extraordinary period in American and world history. All too often biographies of politicians or government officials attribute to the principals ideas, policies, or programs that were, in fact, greatly influenced or even conceived and carried out entirely by staff members. Biographers of Roosevelt, for example, have a tendency to ignore or forget the fact that many of his most famous speeches were written by others, including Cohen and Corcoran. In a way, therefore, writers of more standard

biographies face the identical problem of separating the actual influence of their subjects from the influence of those who surround them and work for them. It is simply easier for the biographer of Roosevelt to ignore this problem than it is for the biographer of Cohen or Corcoran.

### III

Allow me to conclude with a brief comment on the dual biography issue. Although my project is not technically a dual biography, but focuses only on Cohen, in the chapters on the New Deal the close working relationship of Cohen and Corcoran gives it a similar flavor, and raises similar scholarly and literary issues. I want to focus on just one.

When writing about a man who was, at least for a while, part of a team or partnership, it is tempting at times to fall into the habit of thinking of the two subjects as a sort of corporate entity—Cohen-and-Corcoran, as their friends and critics alike called them in the 1930s. Often it is difficult, in fact, to separate the two in terms of their individual contributions to specific projects. This problem is especially magnified during the New Deal, for many of the programs and policies of the New Deal were in effect group efforts—the New Dealers lived together, worked together, and socialized together, and ideas were traded back and forth, borrowed, and copied at a dizzying pace. It is impossible, for example, to determine except in general terms precisely what Cohen contributed to the Securities Act as compared to Landis of Corcoran. Even trying to do so can result in a distorted picture of the process by which policy was made in New Deal Washington.

There is the further danger of reacting in the opposite direction, and viewing Cohen and Corcoran as two sides of the same coin. It is especially tempting to do this because so many viewed them this way in their own lifetime, and because literary pressures may create temptations to create neat or catchy characterizations. To many, Cohen was "the saint," an unassuming, scholarly idealist who labored selflessly to serve the public interest; while Corcoran was an ambitious, self-interested political operator, the "public interest lawyer" who was "working against what he had done" in the New Deal.<sup>23</sup> In the words of one book on the New Deal, Cohen was the "Dreamer," Corcoran the "Dealer."<sup>24</sup> Corcoran also contributed to this image problem. Late in life, Cohen lamented that Corcoran's enemies—of whom there were by then many—"pretended to take seriously his sputterings about power as if he were only concerned with power for power's sake rather than for the vindication of the humanistic values of life



which he cherished and esteems beyond their ken.”<sup>25</sup> Cohen’s image, ironically, benefited by comparison as his partner’s suffered, until he, too, became a kind of caricatured, two-dimensional figure.

My challenge—as for any biographer—is to capture in print the complex, often contradictory reality that Ben Cohen and his contemporaries represented in real life, and to use this carefully drawn portrait to provide fresh insight into the extraordinary times in which they lived and which they helped to shape.

## NOTES

<sup>1</sup> A variety of materials dealing with Cohen’s Zionist activities can be found at the Zionist Archives in New York City. On the Zionist movement generally, see Melvin I. Urofsky, *American Zionism From Herzl to the Holocaust* (Garden City, NY: Anchor Press, 1975).

<sup>2</sup> In 1934, the brokerage firm of Shearson, Hammill & Co. reported to Cohen that it was holding in his account securities valued at over \$167,000, a figure that approximates \$1,000,000 in current dollars. The Shearson account may or may not have held his complete portfolio, and, of course, the value of Cohen’s stocks and bonds had dropped sharply after the 1929 crash.

<sup>3</sup> “Individual Income Tax Return for Benjamin Victor Cohen,” 1929, Cohen Papers, Box 21, Library of Congress. Cohen listed \$13.92 in bank interest; \$24,493.39 in profits from the sale of stocks; \$34,312.50 in dividends, for a total gross income of \$58,819.81. His income from salaries, wages, commissions, and from “Business or Profession” was exactly zero.

<sup>4</sup> During that year, Corcoran and Frankfurter published “Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury,” *Harvard Law Review* 39 (June 1926), pp. 917-1019.

<sup>5</sup> Joseph P. Lash, *Dealers and Dreamers: A New Look at the New Deal* (New York: Doubleday, 1988), pp. 62-4.

<sup>6</sup> Michael E. Parrish, *Securities Regulation and the New Deal* (New Haven: Yale University Press, 1970), p. 64. On the Securities Act of 1933, see generally pp. 42-72.

<sup>7</sup> Corcoran, years later, wrote that “Ben and Jim, both brilliant men, were equally highstrung. They would work each other into emotional frenzies over such esoteric differences of legal opinion that I could grasp the issues just well enough to arbitrate between them.” Lash, *Dealers and Dreamers*, p. 184. Cohen and Landis were never close.

<sup>8</sup> *Securities Act of 1933* (House Report 152, 73d Cong., 1st. sess., 1933), pp. 1-29.

<sup>9</sup> Parrish, *Securities Regulation*, pp. 116-117.

<sup>10</sup> Arthur M. Schlesinger, Jr., *The Coming of the New Deal* (Boston: Houghton Mifflin, 1958), pp. 456-7. See also Parrish, *Securities Legislation*, pp. 121-2.

<sup>11</sup> Lash, *Dealers and Dreamers*, p. 164.

<sup>12</sup> Schlesinger, *Coming of the New Deal*, p. 464.

<sup>13</sup> Raymond Moley, *After Seven Years*, p. 181n.

<sup>14</sup> Quoted in Lash, *Dealers and Dreamers*, pp. 169-70.

<sup>15</sup> Cohen to Robert E. Healy, 23 November 1934, quoted in Parrish, *Securities Regulation*, p. 156.

<sup>16</sup> Lash, *Dealers and Dreamers*, p. 197.

<sup>17</sup> Benjamin V. Cohen to Felix Frankfurter, 20 March 1936, Cohen papers, LC.

<sup>18</sup> *Electric Bond and Share Co. v. SEC*, 303 U.S. 419 (1938).

<sup>19</sup> FDR to Benjamin Victor Cohen, 13 January 1945, FDR Papers, President's Secretary's File, Box 140, Roosevelt Library. Cohen was ultimately appointed Counselor to the State Department under President Harry Truman and Secretary of State James F. Byrnes.

<sup>20</sup> Charles Burlingham to Benjamin V. Cohen, 22 November 1944, Charles Burlingham Papers, Box 2, Folder 19, Harvard Law School; Francis Biddle to FDR, 27 December 1944, FDR Papers, Official File #51-5, Roosevelt Library.

<sup>21</sup> The Corcoran Papers, housed at the Library of Congress, comprise over 600 boxes of material.

<sup>22</sup> The Cohen papers are also in the Library of Congress. Additional material is housed in the National Archives. Because Cohen generally did not save copies of outgoing correspondence, many of his own letters can be found only in the papers of his correspondents.

<sup>23</sup> Joseph Rauh, quoted in Lash, *Dealers and Dreamers*, p. 465.

<sup>24</sup> Lash, *Dealers and Dreamers*, p. 465.

<sup>25</sup> Lash, *Dealers and Dreamers*, p. 466.